THE PORT AUTHORITY OF TAY & IN.

June 7, 2002

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Mr. Jim Dwyer, Reporter *The New York Times*229 West 43rd Street
New York, NY 10036

Re: FOI Reference No. 4098 - Appeal of May 29, 2002

Dear Mr. Dwyer:

This is a response, under the Port Authority's policy on Freedom of Information (the "Policy", a copy of which has been made available to you), to your letter and electronic mail message dated May 29, 2002 (this letter was received in my office electronically on May 29, 2002, and by mail on May 31, 2002). In your letter, you appeal the FOI Administrator's determination to exempt from disclosure the following records of the Port Authority that you had requested by letter dated March 26, 2002:

- Tapes of all radio transmissions from the Port Authority staff and police officers from 8:45AM on September 11, 2001, until noon of that day. If transcripts exist, [you] request copies of those, as well.
- 2. Any written reports generated or kept by the Port Authority that recount the events of September 11, 2001.
- 3. Any daily reports generated by PA police concerning the recovery operations at Ground Zero."

Acting on behalf of the Secretary of the Port Authority, the FOI Administrator, by letter dated April 5, 2002, acknowledged the receipt of your request, and subsequently informed you, by letter dated May 23, 2002, that access to Port Authority records (determined in the interim to be related to the World Trade Center) which you requested was being denied pursuant to exemptions (1), (2), (5), and/or (7) of the Policy.

The Commissioners of the Port Authority (a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey), adopted the Policy (as most recently amended on August 13, 1992), intending to make available for public disclosure and copying existing records of the Port Authority, subject to certain limitations thereon imposed by the Policy in the public interest.

Your additional electronic mail message of May 29, 2002, inquires whether narrowing the request would be helpful. In that regard you provide arguments seeking disclosure of operations tapes or transcripts thereof containing "* * * transmissions from a group of Port workers who went around rescuing people on floors in the high 80s," whom you state perished during such rescue efforts, since "they helped save many lives." Further, you state that your editors are eager

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to publish a full account of the rescue work, and that the Port Authority released similar tapes under identical circumstances in 1993.

The United States Attorney for the Southern District of New York also requested the materials covered by your request. The pending matter has been transferred to the Eastern District of Virginia and we understand that these materials are under protective order (see attached copy of electronic mail message from David Novak, Assistant United States Attorney) and not releasable by rule of court. In addition, the records responsive to your request "are compiled for public safety, law enforcement, or official investigatory purposes (internal or external)," the disclosure of which "may affect public safety, [or] interfere with * * * law enforcement investigations, or judicial or disciplinary proceedings, or deny or prejudice a right to a fair trial or impartial access to such records was properly denied by the FOI Administrator under exemptions (1) and (5) of the Policy.

Having made a determination as to the applicability of exemptions (1) and (5) to this material, I reserve decision as to the applicability of exemptions (2) and/or (7) to any of these records.

Very truly yours,

Jeffrey S. Green General Counsel

Stickelman, Timothy

From: Novak, David [David.Novak@usdoj.gov]

Sent: Friday, June 07, 2002 2:34 PM

To: 'tstickel@panynj.gov'

Subject: FOIA for Port Authority information

Tim:

On behalf of the prosecution team of U.S. v. Zacarias Moussaoui, we request the Port Authority fight the FOIA request by the NY Times for tapes, transmissions and interviews of Port Authority employees. These items will be used as evidence in our prosecution of Mr. Moussaoui for his role in the September 11 attacks in either or both of the guilt and \or penalty phases (we are seeking the death penalty). Local Rule 57 of the Eastern District of Virginia precludes public dissemination of evidence that may be used during the trial. Moreover, U.S. District Judge Leoni Brinkema has entered a protective order also precluding public dissemination of evidence that may be used during the trial. Therefore, disclosure of these items to the NY Times would violate both the local rule as well as J. Brinkema's protective order.

Thanks, Dave Novak.